

**WAUKESHA COUNTY  
MINUTES OF THE PARK AND PLANNING COMMISSION  
ADMINISTRATION CENTER  
THURSDAY, SEPTEMBER 18, 2008, 1:00 P.M.**

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**CALL TO ORDER**

Pat Haukohl, Chairperson, called the meeting to order at 1:00 p.m.

Commission

|                  |             |               |               |
|------------------|-------------|---------------|---------------|
| Members Present: | Pat Haukohl | Jim Siepmann  | Bob Peregrine |
|                  | Walter Kolb | Bonnie Morris | Bill Mitchell |

Commission

Members Absent: Gary Goodchild

Staff

Members Present: Dale Shaver, Director, Department of Parks and Land Use  
Richard L. Mace, Planning and Zoning Division Manager  
Kathy Brady, Secretary Supervisor  
Andrea Hedemann, Land Use Specialist  
Sheri Mount, Senior Land Use Specialist

|                 |              |             |              |
|-----------------|--------------|-------------|--------------|
| Guests Present: | Gene Kovacs  | Tom Traub   | Tom Halquist |
|                 | Bill Miller  | Dave Trost  | Earl Ziebell |
|                 | Ron Borowski | Don Dysland | Frank Homme  |
|                 | Kurt Bartell |             |              |

**CORRESPONDENCE:**

- *Memorandum from Dale Shaver, Director regarding the Comprehensive Development Plan Draft Chapters*

Mr. Shaver explained that chapters from the update to the County Development Plan will be distributed to the Commission in advance for review. In late fall, the Commission will meet jointly with the LUPE Committee to discuss the whole plan.

**MEETING APPROVAL:**

- **WCCA Fall 2008 Conference, October 29, 30 and 31, 2008, Tundra Lodge Resort and Waterpark, Green Bay, WI**

*Mr. Mitchell moved, seconded by Mr. Peregrine, and carried unanimously for approval for the Commission members to attend the WCCA Fall 2008 Conference.*

**MINUTES:**

- *Mr. Peregrine moved, seconded by Mr. Siepmann, and carried unanimously for approval of the September 4, 2008, Minutes, as corrected.*

**PUBLIC COMMENT**

Chairperson Haukohl asked if anyone from the audience wished to address the Commission? There being none, she moved to the next item on the agenda.

• **CU-1490 (Gene Barz) Town of Ottawa, Section 23**

Mr. Mace presented the “Staff Report and Recommendation” dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at S42 W35802 C.T.H. “C” in the Town of Ottawa on the aerial photograph, and stated the petitioner is requesting Conditional Use approval for commercial truck parking for the storage of one (1) skid steer, two (2) trailers, one (1) flat bed truck, one (1) pick up truck and one (1) forklift.

Mr. Mace indicated the petitioner is interested in acquiring the rear parcel along C.T.H. “C”, which is approximately 10 acres in size to construct a single-family residence and an accessory building to store commercial vehicles and equipment for his masonry business. The petitioner has indicated that no customers or employees would come to the property relating to the business. There was a question as to whether the proposed use on the lot constitutes frontage. The Ordinance requires the property front on an arterial or collector street. Access would be via a small strip of land to the rear lot from C.T.H. “C”, which is considered an arterial highway. Variances must be granted from the Waukesha County Board of Adjustment (BOA) to park more than three (3) vehicles and two (2) trailers on the property. In addition, variances must be granted to determine whether or not the amount of frontage on the property constitutes frontage in accordance with the site regulations and commercial truck parking requirements. Mr. Mace said he thought the petitioner was going to own the small strip of land for access and the petitioner feels he has frontage on C.T.H. “C”. He further explained, the Ordinance does not consider that to be frontage and the BOA will need to interpret the term “frontage” and approve the request. Chairperson Haukohl asked if commercial truck parking is consistent with the zoning of the property? Mr. Mace replied, there is a provision in the Ordinance that provides for a person who resides on the property to keep their commercial vehicles on-site to accommodate this type of use. He clarified there will not be a business run from the property. Chairperson Haukohl asked who would be monitoring the number of vehicles? Mrs. Morris replied, the neighbor’s will keep an eye on it and Mr. Mace added that the Town would also.

*After discussion, Mr. Siepmann moved, seconded by Mrs. Morris, and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

• **SCU-1491 (Tim Markowski) Town of Mukwonago, Section 34**

Mr. Mace presented the “Staff Report and Recommendation” dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at S110 W30410 YMCA Camp Road in the Town of Mukwonago on the aerial photograph, and stated the petitioner is requesting a Conditional Use Permit for earth-altering activities (grading) in conjunction with the construction of a boathouse.

Mr. Mace indicated the property is located west of C.T.H. “ES” near the Walworth County Line, with frontage on Upper Phantom Lake containing approximately 1.3 acres. Chairperson Haukohl asked how will the site be restored, where the non-conforming deck (to be removed) is located? Mr. Kovacs, from RSV Engineering representing the petitioner said the site is wooded in certain locations. The proposed location for the boathouse is a sparsely vegetated area and no mature trees will be removed in that area. There are two (2) non-conforming structures by the lake (deck and small storage building) which will be removed. The Waukesha County Board of Adjustment (BOA) granted a variance for the boathouse subject to the removal of the two (2) structures by the lake. In addition, the BOA required an existing cottage to be removed. Upon restoration of the site by the lake, the area will be seeded/sodded to

stabilize the area, eliminating the possibility of additional erosion into the lake. The restoration will take place in Spring 2009. Chairperson Haukohl suggested natural plantings by the lake. Mr. Kovacs said the petitioner is considering that type of planting. Mr. Siepmann asked if the boathouse would be used to store and launch boats? Mr. Kovacs replied, "No", it will be used to store boating accessories. Mr. Siepmann added that the Town required the petitioner to submit a Restoration Plan.

*After discussion, Mr. Peregrine moved, seconded by Mr. Mitchell, and carried unanimously for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

- **SCU-1492 (Douglas and Susan Kincaid) Towns of Mukwonago and Geneseo, Sections 3 and 34**  
Mr. Mace presented the "Staff Report and Recommendation" dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at S63 W30961 Road "X" in the Towns of Mukwonago and Geneseo on the aerial photograph, and stated the petitioner is requesting a Conditional Use Permit for earth-altering activity (grading) in conjunction with the construction of a detached garage.

Mr. Mace pointed out the location of the proposed garage and noted the property has steep slopes. Mr. Siepmann commented that 14' of grade would need to be cut in order to build the garage. He questioned why the garage was not designed to be built into the hill and said the costs would probably be less. Mr. Traub, contractor, said the area is steep and if it was built into the hill there would be additional costs for footings, etc.

*After discussion, Mr. Kolb moved, seconded by Mr. Peregrine and carried unanimously for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

- **SCU-1488 (Hidden Lakes Community Association Ltd.) Town of Vernon, Sections 18 and 19**  
Mr. Mace presented the "Staff Report and Recommendation" dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property, Outlots 2 and 3, Block I, Hidden Lakes Subdivision in the Town of Vernon on the aerial photograph, and stated the petitioner is requesting a Conditional Use Permit to repair an existing dam.

Mr. Mace indicated the original dam was constructed in the early 1960's for the Hidden Lakes Subdivision and reconstructed later on to be more substantial. A leak was discovered in 2003 after a Wisconsin Department of Natural Resources (DNR) dam inspection. The Association hired JEO Consulting Group, Inc. to compile an engineering report for the necessary modifications to repair the dam. The Association has applied to the DNR for Chapter 30 Permits for the project. The water will be drawn down in order to complete the work, and the work is anticipated to commence this coming fall depending on the proper approvals. Mrs. Morris asked how many residential units are supporting the project, to which Mr. Mace replied, approximately 60 units. Mr. Peregrine asked where the water would go on the draw done? Mr. Mace responded, "Down a small creek which leads into the Fox River".

*After discussion, Mrs. Morris moved, seconded by Mr. Peregrine and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

- **SCU-0448G and PO-08-OCOT-8 (Okauchee Lions Club) Town of Oconomowoc, Section 36**

Conditional Use and Site Plan/Plan of Operation request to increase the number of large and small special events on the property.

*Mr. Mace indicated the petitioners requested the matter be taken off the agenda in order for them to go back to the Town of Oconomowoc to clarify the conditions of the Town’s approval.*

- **CU-639B (First United Presbyterian Church of Vernon) Town of Vernon, Section 2**

Mr. Mace presented the “Staff Report and Recommendation” dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at S71 W23280 National Avenue in the Town of Vernon on the aerial photograph, and stated the petitioner is requesting a Conditional Use Permit for the installation of a new permanent free-standing sign.

Mr. Mace said the property is located near the corner of S.T.H. 164 and C.T.H. “ES” in the Town of Vernon. The proposed non-illuminated sign will be 11.5’ tall by 10’ wide and placed on a 30” planter located in the middle of the church’s existing parking lot in order to meet the setback standards. Mr. Kolb wondered why the petitioner’s did not ask for a variance so the sign would be located closer to the road? Mr. Mace replied that the Planning and Zoning Division Staff would not recommend in favor of that.

*After discussion, Mr. Mitchell moved, seconded by Mr. Siepmann, and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances*

- **PO-08-VNT-9 (First United Presbyterian Church of Vernon) Town of Vernon, Section 2**

Mr. Mace presented the “Staff Report and Recommendation” dated September 18, 2008, and made a part of these Minutes. He indicated the matter is related to the previous Conditional Use request CU-639B above.

*After a brief discussion, Mrs. Morris moved, seconded by Mr. Peregrine, and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

- **SCU-1493 (Earl A. Ziebell) Town of Lisbon, Section 11**

Mr. Mace presented the “Staff Report and Recommendation” dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at W234 N8544 Woodside Road in the Town of Lisbon on the aerial photograph, and stated the petitioner is requesting a Conditional Use Permit for an attached garage, family room and an in-law suite.

Mr. Mace indicated the petitioner is proposing to construct a two-story addition to the existing residence. The first floor will be a garage, and a family room and an in-law suite would occupy the second floor. The in-law suite would have two bedrooms, 1.5 baths, a full kitchen and living/dinette area for a total of 800 sq. ft. A 140 sq. ft. screen porch is located off of the living/dinette area. He explained the Ordinance requires that an in-law suite contain a maximum of 800 sq. ft. The Park and Planning Commission is being asked to determine if the screen porch should be counted towards the square footage of the in-law suite. As long as the porch is not permanently enclosed (screened only) and heated, the Planning and Zoning Division Staff does not object to the request. Mrs. Morris said it would also be a good idea if there were stairs off of the porch as another exit in case of a fire. Chairperson Haukohl said she could not support the request because of the screened in porch. She expressed concerns that once the porch is allowed, windows and heat could be added. Mr. Siepmann suggested Condition No. 2 be modified by adding "A Deed Restriction be recorded stating the screened in porch cannot be permanently enclosed or heated." Chairperson Haukohl agreed and further suggested the language "as identified in Exhibit "C" be added to Mr. Siepmann's statement. In addition, Mrs. Morris suggested Condition No. 4 be modified by adding language that a stairway be allowed leading off of the porch as a second entry/exit.

*After discussion, Mr. Siepmann moved, seconded by Mr. Mitchell, and carried unanimously for approval, as conditioned, in accordance with the "Staff Report and Recommendation", with modifications to Conditions No. 2 and 4 to read as follows:*

- 2. A Declaration of Restrictions stating that the residence must be used as a single-family residence, with the in-law unit occupied only by a person or persons related by blood or marriage to the family occupying the principal unit, and that the Conditional Use is not transferable without formal approval from the County Zoning Agency, which can occur without necessity of a public hearing, must be filed in the Waukesha County Register of Deeds Office. A copy of the recorded Declaration of Restrictions must be submitted to the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff, prior to the issuance of the Conditional Use and Zoning Permits. A Deed Restriction shall be recorded to allow the screened in porch as identified in Exhibit "C" of the "Staff Report and Recommendation" with the restriction that the screened in porch shall not be permanently enclosed or heated.*
- 4. The in-law unit shall contain a maximum of 800 sq. ft. not including the screened in porch, and further, an open stairs leading off the screened porch is required as a second entry/exit.*

*The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

**• PO-08-LSBT-03 (Earl A. Ziebell) Town of Lisbon, Section 11**

Mr. Mace presented the "Staff Report and Recommendation" dated September 18, 2008, and made a part of these Minutes. He indicated the matter is related to the previous Conditional Use request SCU-1493 above.

*After a brief discussion, Mrs. Morris moved, seconded by Mr. Peregrine, and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation” and as amended in the above Conditional Use, SCU-1493. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

At 2:15 p.m., the Commission took a 10-minute break and the meeting reconvened at 2:25 p.m.

- **CU-1495 (William Miller) Town of Ottawa, Section, 11**

Mr. Mace presented the “Staff Report and Recommendation” dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at S28 W35390 Spring House Court in the Town of Ottawa on the aerial photograph, and stated the petitioner is requesting a Conditional Use Permit for earth altering activities in conjunction with an exposed basement, deck, patio and pool.

Mr. Siepmann recused himself from voting on this matter due to a possible conflict of interest. Mr. Mace said the property is located in the Preserve of Hunter’s Lake Subdivision in the Town of Ottawa. The petitioner is proposing to expose the basement level and construct a patio area and deck above the patio. An in-ground swimming pool and retaining walls are also being proposed. A Conditional Use Permit is required because grading is proposed beyond 30’ from the foundation. Mr. Miller, petitioner, said he purchased the residence in foreclosure and assumed the original owners may have run out of money and used the fill from the basement to fill in the area which is conducive for an exposed basement.

*After discussion, Mr. Mitchell moved, seconded by Mr. Kolb, and carried by a vote of 5 to 1 (Mr. Siepmann abstained from voting due to a possible conflict of interest) for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

- **CU-84B (German Shepherd Dog Club of Wisconsin) Town of Vernon, Section, 1**

Mr. Mace presented the “Staff Report and Recommendation” dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at W224 S6950 Guthrie Road on the aerial photograph, and stated the petitioner is requesting a Conditional Use Permit for the construction of an addition to the existing training building to be used for additional space for dog training and exercise.

Ms. Stoesser, Treasurer of the German Shepherd Dog Club of Wisconsin, introduced herself and presented an overview of the club. The club has been in existence since 1947 on approximately five acres of land. The original Conditional Use was from 1967. Their intention is to train their own dogs for sport, agility, obedience and community services such as demonstrations for schools, Christmas and Fourth of July parades and offer free preschool puppy training classes for new German Shepherd puppy owners. Chairperson Haukohl mentioned that at the public hearing a neighbor complained that at a special event, trash and other items were thrown over the fence into his yard. Ms. Stoesser said they have apologized to the neighbor and have taken steps to make sure this would not happen again. Mr. Mace said he does not recall any formal complaints from neighbors against the club. Ms. Stoesser said the addition will allow them to hold two classes simultaneously in the building during the winter months.

*After discussion, Mr. Kolb moved, seconded by Mrs. Morris and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

• **PO-08-VNT-8 (German Shepherd Dog Club of Wisconsin) Town of Vernon, Section, 1**

Mr. Mace presented the “Staff Report and Recommendation” dated September 18, 2008, and made a part of these Minutes. He indicated the matter is related to the previous Conditional Use request CU-84B above.

*After a brief discussion, Mrs. Morris moved, seconded by Mr. Kolb and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

• **CU-1111A (Velocitel-Verizon Wireless) Town of Vernon, Section, 14**

Mr. Mace presented the “Staff Report and Recommendation” dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at W224 S6950 Guthrie Road in the Town of Vernon on the aerial photograph, and stated the petitioner is requesting a Conditional Use Permit for the addition of a generator and associated wiring within the existing leased areas for Verizon Wireless.

Mr. Trost, from Verizon Wireless introduced himself and said that WE Energies does not allow any other co-locators on the tower and there would only be one generator. Mr. Siepmann asked why a natural gas generator is not being utilized? Mr. Trost replied, “Because it was specified as a diesel generator and the Town also recommended a diesel generator.” Chairperson Haukohl mentioned that the generator would run for testing one hour every week. She expressed concerns having so many diesel generators running one hour per week (noise, odor, etc.) Mr. Trost noted that there is no regulation regarding diesel generators and Mr. Mace added that the nearest residence is 304’ away. Chairperson Haukohl asked if the possibility of using natural gas was investigated? Mr. Trost responded, the building plan calls for a diesel generator and he did not look into natural gas. Mr. Siepmann reminded him about a prior Commission meeting, which Mr. Trost attended, where there was a lengthy discussion regarding using natural gas vs. diesel generators.

*Mr. Siepmann moved to approve the request, subject to the petitioner investigating utilizing a natural gas generator, if feasible.*

Mr. Mace asked how the Planning and Zoning Division Staff should enforce the permit or if the permit should or should not be issued? Mr. Siepmann clarified his motion by encouraging the petitioner to utilize natural gas if possible, but if the project is delayed for an extended/unreasonable amount of time that would not be fair to the petitioner. Mr. Mace asked if natural gas is available, then what? Mr. Siepmann said if gas is available and getting an easement is not an issue, a natural gas generator would be required. Mrs. Morris suggested that any future generator requests brought before the Park and Planning Commission be required to be natural gas if it is available on the adjacent roads. Mr. Mace said he would instruct the Planning and Zoning Division Staff to inform future applicants to investigate whether natural gas is available and if feasible, a natural gas generator shall be required rather than a diesel generator (a memo to Staff was distributed).

Mr. Siepmann changed his motion as noted below:

*Mr. Siepmann moved, seconded by Mr. Peregrine, and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. In addition, the Planning and Zoning Division Staff will be instructed to inform any future applicant’s requests for diesel generators be subject to the applicant’s investigating whether natural gas is available on the adjacent road. If feasible, a natural gas generator shall be required rather than a diesel generator. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

- **PO-08-VNT-10 (Velocitel-Verizon Wireless) Town of Vernon, Section, 14**

Mr. Mace presented the “Staff Report and Recommendation” dated September 18, 2008, and made a part of these Minutes. He indicated the matter is related to the previous Conditional Use request CU-1111A above.

*After a brief discussion, Mr. Siepmann moved, seconded by Mr. Peregrine, and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. In addition, the Planning and Zoning Division Staff will be instructed to inform any future applicant’s requests for diesel generators be subject to the applicant’s investigating whether natural gas is available on the adjacent road. If feasible, a natural gas generator shall be required rather than a diesel generator. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

- **(Donald Dysland) Town of Oconomowoc, Section 36**

Mr. Mace presented the “Staff Memorandum” dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at W340 N4863/ N4867 Road O in the Town of Oconomowoc on the aerial photograph, and stated the petitioner is requesting approval for retaining walls within 5’ of the south property line.

Mr. Dysland, petitioner, explained that there are two separate retaining walls. He described one of the retaining walls as a flower box built off of the porch (26” high at the highest point). He pointed out that he did not consider it a retaining wall as it does not retain anything. He is requesting the Commission treat the retaining wall as a flower box not a retaining wall, if not, he will remove 1½ rows of bricks to reduce the height to be under the minimum height requirement. Chairperson Haukohl said according to the decision sheet from the August 27, 2008, Waukesha County Board of Adjustment meeting, the covered porch is required to be removed. Mr. Dysland stated he built the porch one (1) ft. over the setback towards the lake and only one (1) ft. of the porch would need to be removed to conform with the minimum setback requirements and the first 7’ or 8’ of the porch will have to be scaled back.

Mr. Mace pointed out on the aerial photograph the outbuildings on the property and said there was one building on the property, which was not included on the Site Plan. Mr. Dysland said the building was a guest cottage. Chairperson Haukohl said according to the decision sheet from the August 27, 2008, Waukesha County Board of Adjustment meeting, the cottage must be removed. Mr. Dysland said he plans to appeal the decision of the Board of Adjustment.



Chairperson Haukohl said the next issue is the shared retaining wall with Mr. Borowski (adjacent neighbor). She noted the Planning and Zoning Division Staff recommends the wall be allowed to remain. Mr. Dysland said he wants the retaining wall removed because it was built by his neighbor without his consent on his property. He pointed out on the photographs, his property line and the wall in question. The wall in question was built on his property while he was out of town.

Ms. Mount, Senior Land Use Specialist said, referring to the retaining wall that Mr. Dysland said is a flower box, that a retaining wall is defined in the Ordinance as being 18" or greater in height. The Park and Planning Commission does not have the authority to alter the definition and he would have to go back to the Board of Adjustment. Mr. Dysland said he did not want to do that and indicated he would remove two (2) rows of bricks from the retaining wall. Chairperson Haukohl indicated the wall was also too close to the lake and asked if that portion would be removed, to which Mr. Dysland replied, "Yes". Ms. Mount said the wall is underneath a portion of the porch that also needs to be removed. Mr. Dysland said the wall butts up to the porch and does not go underneath it. Ms. Mount said part of the porch must come down. Mr. Dysland said as long as he is back 61' the retaining wall doesn't matter. Ms. Mount clarified that as long as the portion of the retaining wall connected to the deck and the porch meet the shore setback he would not have to remove it. Mr. Dysland said he was in agreement with that.

Chairperson Haukohl asked if Mr. Borowski (adjacent neighbor) would come up to the table. Mr. Dysland said that Mr. Borowski should not be rewarded for placing the retaining wall on his property to convenience himself. Chairperson Haukohl said the matter is presented as Mr. Dysland's petition. Mr. Dysland replied, "Only because the retaining wall is located on my property and it is considered my wall even though I did not build it there and want the wall removed." He further stated that this wall is not part of his petition. Ms. Mount asked Mr. Dysland if he indicated that fact when he went before the Town Plan Commission? Mr. Dysland, responded, "No" because they hadn't started anything at that point. Ms. Mount said Mr. Dysland went before the Town Plan Commission to get approval for the shared retaining wall. When he was before the Town Plan Commission, he was told that the Town had nothing to do with the retaining wall and he would have to go through the County. Ms. Mount said Mr. Dysland applied to the Town of Oconomowoc Plan Commission for approval of the shared retaining wall. Mr. Dysland said, "I guess I did, but I changed my mind and now I do not want the shared retaining wall." Ms. Mount stated the Town of Oconomowoc Plan Commission has already approved the request. Mr. Mitchell said because the wall is on his property he could remove the wall whether it was approved or not. Ms. Mount agreed and added that he would need to do something to make sure there is not adverse drainage onto the adjacent property. Mr. Dysland said Mr. Borowski dug the wall 4' to 5' deep and put the dirt on his property to build the retaining wall.

Mr. Borowski said he could explain through photographs how the property looked before, during and after construction. Mr. Kolb said the wall is encroaching on Mr. Dysland's property. Mr. Mitchell asked if the petitioner could withdraw his petition for approval of the shared retaining wall because he would be responsible for remedying the runoff issue? Mr. Peregrine asked Mr. Dysland when he had changed his mind about the wall. When he went before the Town of Oconomowoc Plan Commission, he did not bring up the fact that the wall was built by his neighbor. He added that Mr. Dysland presented to the Town Plan Commission that the wall was necessary for both himself and Mr. Borowski for drainage reasons. Mr. Dysland said that is correct, however, since then the situation has been getting uglier and he now wishes to withdraw his petition. Mr. Peregrine asked if the matter is currently in court? Mr. Dysland replied, "Yes," it is about to go. Mr. Peregrine strongly suggested the Park and Planning Commission not take any action on this or the Borowski matter until such time as the litigation is completed and a decision is reached. The Commission agreed.

*After discussion, Mr. Peregrine moved, seconded by Mr. Siepmann, and carried unanimously that no action be taken on the matter until litigation is completed and a decision has been reached by the courts.*

- **(Ronald Borowski) Town of Oconomowoc, Section 36**

Mr. Mace presented the "Staff Memorandum" dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at W340 N4859/ N4861 Road O in the Town of Oconomowoc on the aerial photograph, and stated the petitioner is requesting approval for retaining wall within 5' of the north property line.

Mr. Borowski, petitioner said the retaining wall is located along the east wall of his residence. He said the wall was built within 5' of the lot line. The retaining wall that Mr. Dysland wants removed is a portion of the wall over the lot line onto his property. He is asking for approval to retain the wall up to his lot line. Mr. Mace pointed out the portion of the retaining wall Mr. Borowski wants to remove is on the upper photograph of Exhibit "B" of the Staff Memorandum ("L" shaped retaining wall, three (3) blocks high). Mr. Mace expressed concerns that the Commission is knowingly allowing a wall to encroach on an adjacent neighbor's property. Mr. Borowski said that he believed he had Mr. Dysland's permission to build the retaining wall and the wall took months to build. Chairperson Haukohl asked, when the Staff Memorandums were written, what was being asked for in this petition? Ms. Hedemann, Land Use Specialist responded, that she was under the impression the retaining wall was one, continuous wall going up to the property line. Ms. Mount added that the Planning and Zoning Division Staff was under the impression that both Mr. Dysland and Mr. Borowski made the petition together for approval of a shared wall. Mr. Siepmann suggested that no action be taken on this matter until a decision has been reached by the courts.

Mr. Borowski said the County required both he and Mr. Dysland to apply for separate Zoning Permits for the retaining wall because it is on both of their properties. His attorney advised him that the matter should be treated as two separate retaining walls. If the wall is disconnected at the lot line, Mr. Dysland would have to address the drainage issues. He gave Mr. Dysland a solution, paid for the solution and put the solution up with his permission (or so he thought) and the courts will decide that fact. He is asking the Commission to approve the retaining wall within 5' of the lot line (only the portion that is clearly on his property).

Mr. Mitchell said he agreed with Mr. Siepmann that no action be taken on the matter because the Commission should hear from all affected parties. Mr. Mace added that the Planning and Zoning Division would not start any civil action on either of the petitioners.

*After discussion, Mr. Siepmann moved, seconded by Mr. Kolb, and carried unanimously, that no action be taken on the matter until litigation is completed and a decision has been reached by the courts.*

- **(Shawn Rutka) Town of Summit, Section 24**

Mr. Mace presented the "Staff Memorandum" dated September 18, 2008, and made a part of these Minutes. He pointed out the location of the property at 1238 North Breezeland Road in the Town of Summit on the aerial photograph, and stated the petitioner is requesting approval for retaining walls within 5' of the north and south property lines.

Mr. Mace indicated the property is located on the west shore of Lower Nemahbin Lake. Mr. Mace said the residence is higher than what the Zoning Permit allowed. Ms. Barrows, Senior Land Use Specialist, explained the neighbor to the south also has a retaining wall near the lot line that is failing and she has submitted written documentation supporting the retaining wall construction. When the Rutka's build their retaining wall, the neighbor would get a little bit more property and her failing retaining wall will be removed in the process. Instead of having two retaining walls right next to each other, the petitioner would remove the neighbor's wall and build the new wall on his property and he would be responsible for maintaining it. There would be no shared wall but Condition No. 7 would allow the petitioners access on the neighbor's property to maintain the wall and a Deed Restriction would be recorded to that fact.

*After discussion, Mrs. Morris moved, seconded by Mr. Peregrine and carried unanimously for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.*

**ADJOURNMENT**

*With no further business to come before the Commission, Mr. Siepmann moved, seconded by Mr. Mitchell to adjourn at 3:50 p.m.*

Respectfully submitted,

Bonnie Morris  
Secretary

BM:kab